

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

VS.

TIMOTHY EDWARD COOK,
XYTOS, INC.,
ASIA EQUITIES, INC.,

Defendants.

No. 1:13-cv-01312-SEB-MJD

REPORT AND RECOMMENDATION REGARDING DEFAULT OF DEFENDANTS XYTOS, INC. AND ASIA EQUITIES, INC.

On July 1, 2014 the Court granted the withdrawal of counsel for Defendants Xytos, Inc. (“Xytos”) and Asia Equities, Inc. (“Asia”), which left those entities unrepresented in this matter. [Dkt. No. 36.] At that time, the Magistrate Judge reminded Xytos and Asia that, “[a]s a corporate entity, Defendants must be represented by counsel for this matter to proceed.” [Id. at 1.] Accordingly, the Court ordered Xytos. and Asia “to obtain new counsel and for such counsel to enter their appearance in this matter by no later than **July 30, 2014** [or] [i]f counsel does not appear to represent Defendants as ordered, then Defendants Xytos, Inc. and Asia Equities, Inc. are hereby Ordered to Show Cause, by no later than **August 1, 2014**, why default should not be entered against them on Plaintiffs= Complaint for Defendants= failure to appear to prosecute and defend this action, because a corporate entity cannot represent itself.” [Id. at 1-2 (emphasis in original).] On August 5, 2014, the Court *sua sponte* enlarged the time for Xytos

and Asia to obtain counsel to August 19, 2014 and further ordered that “[i]f counsel does not appear to represent Defendants as ordered, then Defendants Xytos, Inc. and Asia Equities, Inc. are hereby Ordered to Show Cause, by no later than **August 21, 2014**, why default should not be entered against them on Plaintiffs’ Complaint for Defendants’ failure to appear to prosecute and defend this action, because a corporate entity cannot represent itself. No further enlargements will be granted.” [Dkt. 38 (margin entry).]

To date, no counsel has appeared for Xytos, Inc. and Asia Equities, Inc. and no response to the order to show cause has been filed. As corporations, Xytos, Inc. and Asia Equities, Inc. cannot appear *pro se*. *Nocula v. UGS Corp.*, 520 F.3d 719, 725 (7th Cir. 2008). It appears to the Court that Xytos, Inc. and Asia Equities, Inc. have abandoned their defense of the claims filed against them by Plaintiff. The Court further finds that Xytos, Inc. and Asia Equities, Inc. have failed to follow direct orders of the Court and are without proper representation. The Magistrate Judge therefore finds that Defendants Xytos, Inc. and Asia Equities, Inc. are in **DEFAULT** in this matter and **RECOMMENDS** that the Clerk of the Court be ordered to enter **DEFAULT** against Xytos, Inc. and Asia Equities, Inc.

Any objections to the Magistrate Judge’s Report and Recommendation shall be filed with the Clerk in accordance with 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), and failure to timely file objections within fourteen days after service shall constitute a waiver of subsequent review absent a showing of good cause for such failure.

Dated: 09/05/2014



Mark J. Dinsmore
United States Magistrate Judge
Southern District of Indiana

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